

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner
v

File No. 88276-001

Physicians Health Plan of Mid-Michigan
Respondent

Issued and entered
This 12th day of May 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On March 10, 2008, XXXXX, on behalf of her son XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On January 31, 2008, after a preliminary review of the material submitted, the Commissioner accepted the request.

This case required an analysis by a health care professional so the Commissioner assigned it to an independent review organization which submitted its recommendation on March 24, 2008.

II
FACTUAL BACKGROUND

The Petitioner is a member of Physicians Health Plan of Mid-Michigan (PHP) and her health benefits are defined in PHP's certificate of coverage (Certificate).

Through her oral surgeon the Petitioner requested coverage for the surgical correction of a developmental dental facial deformity (orthognathic surgery). PHP denied the request. The Petitioner appealed and exhausted PHP's internal grievance process. PHP maintained its denial and sent a final adverse determination letter dated January 3, 2008.

III ISSUE

Did PHP properly deny the Petitioner coverage for orthognathic surgery?

IV ANALYSIS

Petitioner's Argument

The Petitioner argues that the surgery is medically necessary because he has a jaw deformity that causes a constricted airway, mouth breathing, lip incompetence, and an impinging bite.

Dr. XXXXX of the XXXXX Department of Oral and Maxillofacial Surgery examined Petitioner and described the surgical procedures needed to correct the Petitioner's deformity:

This patient's medical history, clinical and radiographic evaluation is consistent with diagnosis of 524.2, 524.3, 524.4, 524.5 and 524.04. As a result, patient's skeletal functional deformity and difficulty biting off and chewing food, trauma to the roof of the mouth because of the impinging bite, obligate mouth breathing in his sleep because of associated sleep incompetence, I have recommended correction through a mandibular sagittal advancement osteotomy (21196) and a maxillary over the NA advancement genioplasty (2112). This will require approximately 3 hours of general anesthetic and overnight observation.

Dr. XXXXX, Petitioner's orthodontist, in a December 6, 2007 letter to PHP, wrote:

The underlying causative factor to [Petitioner's] malocclusion is his underdeveloped/retrognathic mandible. During the years of his greatest amount of facial growth. . .his mandible did not grow enough to advance adequately to allow the proper fit of his teeth. In addition to this, his upper front teeth have tipped back in order to provide a means of having some contact with the lower front teeth to allow XXXXX to incise foods; however, this tipped back angulation of the front teeth and complete collapse down over the lower front teeth will aggressively erode away the lower front teeth in a relatively short time.

[Petitioner's] lower jaw is significantly set back, 13mm behind what a normal position would be, and there is a resultant constricted airway due

to his retrognathic mandible. Since [Petitioner] is no longer having any active facial or mandibular growth (and even when he was actively growing, it is unlikely that we would have been able to use orthodontic treatment and growth modification alone to achieve this much “catch up” growth of his mandible) any treatment rendered without the component of orthognathic surgery would merely maintain this posterior positioned mandible and constricted airway and set the teeth up in a compromised angulation in an attempt to get an acceptable chewing surface. The teeth, facial muscles, facial bones and jaw joints would then forever be functioning in an underlying state of instability and excess strain which then could lead to further deterioration of the teeth and masticatory apparatus in the future. Therefore, orthodontic treatment alone and/or dental therapeutics are inadequate means of treating [Petitioner’s] skeletal malocclusion properly.

The Petitioner argues that the requested services are for a medical not a dental problem and he wants PHP to cover the orthognathic surgery.

Respondent’s Argument

In its final adverse determination letter to the Petitioner, PHP denied coverage for the orthognathic surgery, saying “the clinical criteria for coverage of orthognathic surgery were not met. Additionally, maxillary and mandibular osteotomies are specifically excluded from coverage as well as treatment for TMJ.” PHP cited exclusions in Section 2 of the certificate. PHP subsequently argued that mouth rehabilitation was also excluded from coverage.

PHP believes it properly denied the Petitioner’s request for coverage.

Commissioner’s Review

The issue in this case is coverage for orthognathic surgery, the surgical correction of abnormalities of the mandible and maxilla. Under the certificate and PHP’s orthognathic surgery medical policy, orthognathic surgery is covered only when specific criteria are met. The policy says:

PHP will cover orthognathic surgery from the medical benefit when. . . established criteria are met, and approved by the Medical Director utilizing the following clinical determination guidelines. PHP considers orthognathic surgery medically necessary for correction of skeletal deformities of the maxilla or mandible when clinical documentation indicates:

- a) Skeletal deformities are contributing to medically significant

functional impairment of airway or nutrition

- b) A medical as opposed to dental physiological functional impairment would be improved by orthognathic surgery
- c) Non surgical treatment, such as dental therapeutics or orthodontics alone, have not adequately treated the condition

The Petitioner has argued that the services he is requesting are medical, not dental, in nature since he cannot chew, has an impinging bite that is causing trauma and has a constricted airway. His orthodontist, Dr. XXXXX, has noted that he has breathing problems and has also described the longer term harm his condition is causing to his teeth. An oral surgeon, Dr. XXXXX of the XXXXX, has documented the Petitioner's difficulty in eating, the trauma to the roof of his mouth, and his sleeping difficulties, all due to his jaw abnormality. To resolve this issue, the Commissioner asked for the recommendation of an independent review organization (IRO).

The IRO reviewer is board certified in oral and maxillofacial surgery, holds an academic appointment and has been in practice for more than 10 years. The IRO reviewer examined the medical records submitted and the PHP Certificate and concluded that the Petitioner's surgery is medically necessary and that Petitioner meets PHP's criteria for orthognathic surgery. The IRO noted that Petitioner's treating providers have determined that orthodontics and other non-surgical treatments will not correct his skeletal deformity. The IRO report explained:

[G]iven the nature of the member's skeletal deformity as well as his masticatory difficulties and the fact that his dentofacial deformity cannot be corrected with non-surgical means, the member meets the criteria for surgical correction of maxillofacial skeletal deformities contained in the parameters of care of the American Association of Oral and Maxillofacial Surgeons Guidelines. . . . [T]he member meets the Health Plan's criteria for orthognathic surgery because he has a skeletal deformity that is contributing to impairment of nutrition given his difficulty chewing and incising foods and non-surgical treatment and orthodontics would be ineffective to treat his condition.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or

reasons why the commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b) The IRO's analysis is based on extensive experience, expertise, and professional judgment. The Commissioner can discern no reason why that judgment should be rejected in the present case. Therefore, the Commissioner accepts the findings of the IRO that that the orthognathic surgery requested by the Petitioner does meet criteria for coverage.

**V
ORDER**

The Commissioner reverses PHP's January 3, 2008, final adverse determination. PHP is responsible for covering the Petitioner's orthognathic surgery under the terms of its certificate and related medical policy. PHP shall authorize coverage for the surgery and related services within 60 days of the date of this Order subject to any applicable deductibles or copayments. PHP shall, within seven days of providing coverage, provide the Commissioner proof it has implemented the Commissioner's Order. To enforce this Order, the Petitioner must report any complaint regarding the implementation of this Order to the Office of Financial and Insurance Services, Health Plans Division, toll free 877-999-6442.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

Ken Ross
Commissioner